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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 74-16187

In the name of Kurt W. and Janet E. Bird

**PROTESTANT WATER USERS' POST-
HEARING BRIEF**

COME NOW, the Protestants Beyeler Ranches LLC, High Bar Ditch Assn, Carl Ellsworth, Lemhi Irrigation District, and Lemhi Soil & Water Conservation District (hereinafter "Protestant Water Users"), by and through their counsel of record Barker Rosholt & Simpson LLP, and hereby submit this Post-Hearing Brief for the evidentiary hearing held on August 28-29, 2019 in Salmon, Idaho.

INTRODUCTION

The evidence presented at the hearing demonstrates that it is not in the "local public interest" to grant the new 320-acre irrigation water right permit requested by the Applicants Kurt & Janet Bird (hereinafter "Applicants"). The proposed water right will reduce water available for existing decreed "high flow" water use, increase the consumptive use of water in the Lemhi

River Basin, and hinder the opportunity for the water users to reach a Section 6 agreement that would provide critical long-term incidental take protection under the Endangered Species Act (ESA). In addition, the proposed new water use is contrary to the “conservation of water resources within the state of Idaho” given the Applicants’ existing water rights, the fact it would reduce water available under the Wild & Scenic Rivers subordination cap, and would further deplete unappropriated water needed for listed salmonids. For these reasons, the Idaho Department of Water Resources (IDWR or Department) should deny application for permit number 74-16187.

ARGUMENT

I. Application for Permit Criteria.

Pursuant to Idaho law, the Applicants carry the burden to prove the new application for permit meets the following criteria:

- (a) The proposed use will not reduce the quantity of water under existing water rights;
- (b) The water supply is sufficient for the purpose for which it sought to be appropriated;
- (c) The application is made in good faith, not for delay or speculative purposes;
- (d) The application does not conflict with the local public interest as defined in section 42-202B, Idaho Code; and
- (e) The application is consistent with the conservation of water resources within the state of Idaho.

See Idaho Code § 42-203A(5); IDAPA 37.03.08.40.04; and 45.01.

With respect to the “local public interest,” the relevant regulations provide further definition and evaluation criteria:

- (3) “Local public interest” is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

Idaho Code § 42-202B.

e. Criteria for determining whether the project conflicts with the local public interest. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:

- i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;
- ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and
- iii. An application which the Director determines will conflict with the local public interest will be denied unless the Director determines that an over-riding state or national need exists for the project or that the project can be approved with conditions to resolve the conflict with the local public interest.

IDAPA 37.03.08.45.01.e.

The Applicants failed to carry the burden of proof to show that a new 320-acre consumptive use permit would be in the “local public interest” for water users in the Big Timber and Lemhi River watersheds. Further, the new permit would be contrary to the “conservation of water resources within the state of Idaho” given the Applicant’s current water rights and the limited supply of water available under the subordination cap for the Salmon River Basin pursuant to the Wild & Scenic Rivers Act. Moreover, the application would deplete available unappropriated flows in Big Timber Creek that support fish habitat.

As detailed below, since the application for permit does not meet these statutory and regulatory criteria, the permit should be denied.

II. Decreed “High Flow” Water Use is in the “Local Public Interest” as it Benefits Basin 74 Water Users and the Lemhi River.

The Snake River Basin Adjudication (SRBA) District Court decreed the following general provision in Basin 74:

The practice of diverting high flows in the Lemhi Basin, in addition to diverting decreed and future water rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:

- (a) the waters so diverted are applied to beneficial use.
- (b) existing decreed rights and future appropriations of water are first satisfied.

Ex. 11 at 2.

The Court described the genesis of this unique water use and its importance to water users throughout the Lemhi River Basin as follows:

Ultimately the parties agree to recognize and authorize the use of high flows via the inclusion of the following provisions in the *Lemhi Decree*:

* * *

[Revised Finding of Fact No. 7]

7. The Lemhi River Basin presently has almost non-existent storage facilities in which to preserve water for use later in the irrigation season when the flow in surface water sources diminishes. Diversions of high waters or flood waters for irrigation purposes within the basin have been practiced in an effort to hold or store water underground within the basin, which later contributes to the flow of the streams and river, and has the effect of augmenting or supplementing this flow during the latter portion of the irrigation season. While the amount of such high water available varies from year to year, an effort has been made to divert all of such water, whenever and in whatever amounts it is available, and to apply it on irrigated lands. The practice has been to distribute and use this water in an informal manner. There is some potential for development of water storage projects within the basin; however, general interest in such development will probably only occur as the economic feasibility thereof increases.

[Revised Finding of Fact No. 14]

14. Water has been diverted and applied to a beneficial use as described in the following decree of water rights. In addition, the water users in the Lemhi River Basin have historically diverted the so called "high water or flood water" generally during the months of May and June.

* * *

Unlike the *Reynolds Decree*, the *Lemhi Decree* included specific findings of fact, specifically findings of fact 7 and 14, regarding the historical practice of diverting high flow water in conjunction with existing claims and the purpose and necessity of high flow use. See *discussion supra* § III.A. Put another way, it has already been judicially determined in a previous court proceeding that the high flow general provision is necessary for the efficient administration of water rights.

Ex. 189 at 8, 9, 27 (emphasis in original).

The decreed water use is important to all water users up and down the Lemhi River Basin. Notably, the practice supports and enhances the irrigation of existing lands as well as filling soil profiles that help store water in the shallow aquifer which then returns to the river later in the irrigation season. *See generally, Testimony of Carl Ellsworth, Merrill Beyeler, R.J. Smith, Carl Lufkin, and Bruce Mulkey* (Aug. 29 hearing audio recordings at MP3 files MZ08, 09, and 11). At hearing, several water users explained how the “high flow” water use practice benefits water users in the basin and supports existing irrigated lands.

For example, water users Merrill Beyeler and Carl Ellsworth testified how high flows on Big Timber are diverted and used to benefit irrigated lands on their ranches. *Ellsworth Test.* (MZ08 at 4:00-6:00); *Beyeler Test.* (MZ08 52:00-54:00). Mr. Ellsworth explained how excess high flows benefit the area aquifer and can be used by neighboring water users as well. *Ellsworth Test.* (MZ08 8:00-10:00). Rancher and water user Carl Lufkin further explained how diverting and using high flow is critical for recharging the aquifer in the local area and how the practice augments river flows later in the irrigation season. *Lufkin Test.* (MZ09 6:00-8:40).

Moreover, the use of “high flow” is particularly important to certain water users on Big Timber Creek that have junior priority water rights. *See Ellsworth Test.* (MZ08 11:30-12:00). Penny Jane Ogden-Edwards described the importance of Big Timber Creek “high flow” water to her property and the establishment and growing of trees that she has planned. *See generally Ogden-Edwards Test.* Water users Kerry and Alan Purcell only have junior water rights on Big Timber Creek (i.e. priorities 1933 and junior), therefore the use of “high flow” is critical for the continued successful irrigation of their property. *See Ex. 28* (Timber Creek Delivery Summary); *Ellsworth Test.* (MZ08 12:00). Assisting existing water right holders in “making a crop” or ensuring irrigation of their lands is in the “local public interest.” Thus, the ancillary practice of “high flow” water use

is certainly critical for users like Ms. Ogden-Edwards the Purcells and should be considered when evaluating new appropriations on Big Timber Creek.

Although it was anticipated that “high flow” water use would continue through decreed water rights, that ultimately did not occur as the SRBA Court decreed the practice through a general provision. *See* Ex. 189. At the time of the adjudication the water users believed the “high flow” claims would ultimately be decreed as water rights with a defined priority date. *See Beyeler Test.* (MZ08 55:00), *Ellsworth Test.* (MZ08 15:00-16:00, describing the reason he protested 74-15613). When that didn’t occur, new appropriations, like Mr. Whittaker’s water right 74-15613 (Ex. 9), jumped ahead of “high flow” use for purposes of water right administration. *See Beyeler Test.*, *Ellsworth Test.* (MZ08 16:40-17:00). Appropriating and administering these new water rights in the Upper Lemhi Basin represented a change from past water use practice whereas “high flow” use was not subject to curtailment in favor of new water rights.

Further, Mr. Whittaker’s permit was conditioned to require 13 cfs to be present in Big Timber Creek before he could divert (as measured near the townsite of Leadore). *See* Ex. 9. This condition had the inadvertent effect of removing 13 cfs from those who could otherwise divert and use “high flow.” *See Lufkin Test.* (MZ09 9:00). Coupled with Mr. Whittaker’s diversion of 4 cfs, the administration of his water right reduces the supply for prior “high flow” use by 17 cfs.

Carl Lufkin specifically described how in some years other water users would not receive any “high flow” water due to this condition and exercise of Mr. Whittaker’s new 2005 water right. *See Lufkin Test.* (MZ09 9:00). This new situation is particularly difficult for junior users in years when there is hardly any “high flow.” *See Ellsworth Test.* (MZ08 10:50). As such, further erosion of the decreed “high flow” use is not in the “local public interest” as the Applicants’ new permit would further reduce the available supply in Big Timber Creek by 6 cfs. Stated another way, if

granted, a total of 23 cfs would be effectively removed from the “high flow” water use supply.

In addition to supporting existing water users and irrigation in the Lemhi River Basin, the diversion and use of “high flow” benefits the river resource and fisheries. Several water users with decades of experience in the area confirmed that the diverting “high flow” helps enhance Lemhi River flows later in the irrigation season. *See generally Ellsworth, Beyeler, Smith, Mulkey, Lufkin Test.; see also, Ex. 12 (Chapman Report).* Carl Lufkin emphasized the importance of groundwater resources and how tributary groundwater helps with water temperature. *Lufkin Test.* (MZ09 6:00-7:30, 8:00-8:40). Carl Ellsworth also explained how diversion of “high flows” recharges the groundwater resource and is in the “local public interest.” *Ellsworth Test.* (MZ08 8:00, 17:00). Recharging groundwater supplies and the resulting impact of improving river reach gains later in the irrigation season is in the “local public interest” as it helps maintain river flows at critical periods during the summer. The effect of granting the Applicants’ new permit would reduce water available for “high flow” use and would hinder the benefits that the existing practice provides to the watershed later in the season.¹

With respect to applying the “local public interest” criteria, in *Chisolm v. Idaho Dept. of Water Resources*, 142 Idaho 159, 125 P.3d 515 (2005), the Idaho Supreme Court stated that “[l]ocal public interest’ should be read broadly so as to secure the greatest possible benefit.....Factors of the local public interest carry different weight depending on the specific circumstances and interests involved, and both the benefits and detriments must be considered.” *Id.* at 164, 125 P.3d at 520 (citing *Shokal v. Dunn*, 109 Idaho 330, 338-339 (1985)).

¹ Mr. Bird confirmed at hearing that he intended to divert and use the water through center pivots. Several water users explained that the use of pivot sprinklers has the effect of reducing seepage into the aquifer and subsequent return flows to the river. *See Lufkin Test.* (MZ09 11:30); *Ellsworth Test.* (MZ08 9:50-10:30); *Mulkey Test.* (MZ11 14:00-15:00, 18:00).

Here, the decreed “high flow” water use represents a critical irrigation/recharge practice unique to the Lemhi River Basin. Water users in the basin have relied upon this water use practice for decades. The SRBA Court recognized this fact and concluded that the practice was necessary for the efficient administration of water rights through a general provision. Although subordinated to future appropriations, IDWR should carefully evaluate the specific circumstances of how the existing “high flow” use benefits local water users and the river resource as a whole. Whereas the issuance of Mr. Whittaker’s water right 74-15613 and its condition have already effectively removed 17 cfs from “high flow” water use in Big Timber Creek, it is not in the “local public interest” to further reduce the available by supply by issuing new permits, including an additional 6 cfs as requested by the Applicants.

In sum, the continued use of “high flow” and the benefits it provides to existing irrigated lands and the Lemhi River outweighs the interests of granting a new consumptive use water right for 320 additional acres. For these reasons IDWR should deny new consumptive use application for permit 74-16187 since it conflicts with the “local public interest.”

III. Reaching a Long-Term ESA Section 6 Agreement is in the “Local Public Interest” of Area Water Users and Granting a New Permit would be Contrary to that Effort.

NOAA Fisheries and the U.S. Fish & Wildlife Service have listed certain fish species under the Endangered Species Act (ESA) (16 U.S.C.A. § 1531 *et seq.*). Notably, spring/summer Chinook salmon, steelhead, and bull trout are listed as threatened or endangered and have critical habitat in the Lemhi River watershed, including in Big Timber Creek. Pursuant to Section 9 of the ESA, water users in the Lemhi have been previously threatened with a “take” violation for harm to listed salmonids. *See generally*, Exs. 193, 194, 204, 206A, 206B. Particular circumstances concerning stranded salmon in past years were described at hearing. Bruce Mulkey explained the threats by agency staff to take water away at one point in time.

Consequently, water users have initiated several projects and actions over the years to screen diversions, reconnect dewatered segments of the Lemhi River and tributaries, and improve habitat conditions. *See generally*, Exs. 204, 210, 212, 221, 222-24, *DiLucca Test.*, *Bridge Clark Test.*, *Cassel Test.*, *Ellsworth Test.*, *Beyeler Test.*, *Smith Test.*, *Mulkey Test.*

For several years the State of Idaho and Lemhi water users have attempted to negotiate and execute a long-term Section 6 Agreement with the federal agencies. *See* 33 U.S.C.A. § 1535 *et seq.* The Idaho State Water Plan encourages and recognizes the importance of such agreements. *See* Ex. 21 (see pp. 25-27). Executing such an agreement would provide long-term incidental take protection under Section 10 of the ESA. *See* 33 U.S.C.A. § 1539 *et seq.*

At hearing, several water users expressed their concern with ESA issues in the basin and how entering into a long-term Section 6 Agreement is in the water users' best interests. *See Ellsworth Test.* (MZ08 18:00-24:00); *Smith Test.* (MZ11 3:00-4:15); *Mulkey Test.* (MZ11 10:00-13:30). Mr. Bird acknowledged that protecting his existing rights was important for ESA purposes as well. *Bird Test.* (Aug 28 MZ04 1:20:00). Mr. DiLucca, expert witness for the Idaho Department of Fish & Game, echoed this sentiment and expressed the importance of a Section 6 Agreement for local water users. *DiLucca Test.* (MZ05 3:10-4:15). Protecting existing water rights and uses is clearly in the "local public interest" as defined under Idaho law and is critical to the continued economic well-being of Lemhi County.

On the other hand, issuing a new consumptive use water right in the Lemhi River Basin is contrary to and directly conflicts with that effort. *See Ellsworth Test.* (MZ08 21:00-24:00). The agencies that manage the fisheries resource, Idaho Department of Fish & Game (IDFG) and NOAA Fisheries, have specifically protested and commented on the application subject to this case. *See* IDWR Ex. 3, Exs. 201; 205.

Notably, in his expert report, which was unrefuted at hearing, Mr. DiLucca concluded:

I have concluded that if the application is approved the resulting diversions would have adverse effects on ESA-listed fish species, and would tend to undermine existing and planned efforts to promote recovery and delisting of ESA-listed fish species.

Ex. 201 at 1.

NOAA Fisheries, the state's federal counterpart agency, echoed this same conclusion in its comment letter on the application:

We believe that approval of the proposed water right would adversely affect NMFS' trust resources (i.e. Snake River Basin steelhead and Snake River spring/summer Chinook salmon). Because NMFS' trust resources are also public resources, we feel that approval of the application is not in the public's interest.

* * *

Improving streamflow in the mainstem Lemhi River and tributary streams is a high priority for recovery of the Lemhi River Chinook salmon and steelhead populations. Toward that end, there are a variety of completed, ongoing, and planned future streamflow restoration projects that are made possible by collaborative efforts among private landowners and a variety of natural resource agencies. NMFS feels that approval of water right application 74-16187, without provisions to protect fishes and their habitat, would reduce value of completed and ongoing habitat restoration, and would likely impair future restoration efforts.

Ex. 205.

This evidence is particularly important given the critical role the Lemhi River plays in ongoing salmon recovery efforts. The recently released *Upper Salmon Subbasin Habitat Integrated Rehabilitation Assessment* (hereinafter "IRA") (June 2019) clearly shows that the Lemhi River Basin has the most ground to make up for Chinook salmon recovery, comparing existing habitat capacity to what is needed for recovery.² See Ex. 203, p. 44.

² This report was not available at the time of the issuance of water right permit 74-15613. Further, the State of Idaho has spent considerable time and resources since 2011 on habitat projects in the Lemhi River Basin. Granting additional consumptive use water rights would be contrary those efforts to the detriment of listed salmonids and the water users' interests in protecting existing water uses in the basin.

At hearing, Mr. DiLucca confirmed this fact and described the Lemhi River as “critical to salmon.” He further explained that the water resources upstream of Hayden Creek, including Big Timber Creek, are “a priority for salmon habitat.” *See DiLucca Test.* (MZ05 2:00-3:00). NOAA Fisheries’ Recovery Plan, released in November 2017, further confirms this point and highlights the limited life history diversity caused by habitat conditions including lack of tributary access. Ex. 204, pp. 169. The plan documents current limiting factors in the Lemhi River Basin and highlights the importance of continuing efforts by the State of Idaho and local water users. Ex. 204, pp. 218-236. Compounding these problems with new consumptive use appropriations will only hinder those recovery efforts. Notably, Mr. DiLucca explained that he believed granting new water rights would harm the effort to execute a long-term Section 6 Agreement. *DiLucca Test.* (MZ05 4:15).

The above-referenced Recovery Plan (2017) and IRA (2019) represent important new information for IDWR to consider in regards to application for permit 74-16187. Notably, this information and data was not available when Mr. Whittaker’s permit (74-15613) was issued in 2011. Although IDWR concluded it was in the “local public interest” to issue a new irrigation water right at that time, the additional evidence concerning listed salmonids in the Lemhi Basin presented in this case, including IDFG’s unrefuted expert opinion, clearly shows that reasoning no longer applies for purposes of evaluating new consumptive use water rights today. Whereas the State of Idaho and local water users have spent considerable time and resources to recover listed salmonids in the Lemhi Basin, issuing a new consumptive use water right directly conflicts with those efforts and would negatively impact their ability to reach a long-term Section 6 Agreement.

In sum, this unique “local public interest” warrants denial of application for permit 74-16187 under these circumstances. Continued irrigation of existing lands in the Lemhi River Basin that stands to benefit all water users should be given a priority for long-term protection. Granting a

new water right for 320 acres does not outweigh the benefits of protecting the existing agricultural operations in the Lemhi River valley. Consequently, IDWR should deny application for permit 74-16187 for those reasons.

IV. The Application is Contrary to the Conservation of Water Resources within the State of Idaho Given Unique Interests in the Lemhi River Basin.

First, the statutory “conservation” criteria does not just concern the Applicants’ water use efficiency, but it also relates to unappropriated water available for listed salmonids and available water to be used in the Salmon River Basin as a whole.

In his *Final Order* concerning water right 74-15613, the Director noted:

8. Furthermore, in considering the conservation of the waters of the state of Idaho, portions of unappropriated water in streams supporting anadromous fish should remain in the stream for the protection of fish habitat.

Ex. 186 at 8.³

The evidence presented by IDFG in this case confirms that consuming any more unappropriated water in Big Timber Creek would “adversely affect” listed salmonids and therefore inconsistent with the “conservation of water resources within the state of Idaho.” *See generally*, Ex. 201; *DiLucca Test*.

Next, the Applicants currently hold water rights to Big Timber Creek authorizing the diversion of up to 46.37 cfs for the irrigation of 1,554.5 acres. *See* Exs. 301-309, IDWR Ex. 17, *Bird Test*. (Aug. 28, MZ04 1:01:00). Mr. Bird acknowledged at hearing that irrigation of his pasture ground, such as the new proposed 320 acres, would not be as productive as his hay or crop land. *Bird Test*. (Aug. 28, MZ04 57:00-58:00). Mr. Bird also described his current “high flow” use. *Id*.

³ Although not offered and admitted into evidence, the Hearing Officer should take official notice of the *Final Order* in *The Matter of Application for Permit to Appropriate Water Permit No. 74-15613, in the Name of F. James and Paula J. Whittaker* (dated May 10, 2011).

(Aug. 28, MZ04, 1:03:00). Although certain water rights are curtailed every year due to priority and supply, the Applicant has still developed a successful ranching operation over the years.

Although it would provide a benefit, Mr. Bird further acknowledged that the limited irrigation of an additional 320 acres was not critical or a “make or break” development for his current operations.

Bird Test. (Aug. 28, MZ04 1:23:00).

With respect to new water right appropriations in the Upper Salmon River Basin, the Wild & Scenic Rivers Act Agreement, approved by the SRBA Court, subordinated the U.S. Forest Service water right on the Main Salmon River to future development of 150 cfs and 5,000 acres. *See* IDWR Ex. 13, Ex. 310. Presently, IDWR has approved water rights for approximately 61 cfs totaling 2,600 acres. Ex. 20. Since the fall of 2018, several applications for permit have been filed in the Upper Lemhi River Basin, seeking the irrigation of up to an additional estimated 35 cfs and irrigation of up to 2,200 acres. *See* Ex. 20. If approved, the cumulative consumptive use of an additional 2,200 acres would take up nearly all of the rest of the available water under the subordination cap. Apart from the reasons described above related to the ESA issues, appropriating water for the limited use of a 2018 priority on Big Timber Creek is not in the interests of “conservation of water resources within the state of Idaho” when that water could be better used in other areas of the Salmon River Basin.

For example, if a water right on the main stem Salmon River would have a longer irrigation season (i.e. not curtailed as soon), that use would promote a more economic and efficient use of the water than a limited use on a high tributary. IDWR should examine those circumstances and plan accordingly in its new water right appropriation decisions. Further, using nearly half of the subordination cap for new water rights in the Upper Lemhi River Basin may not represent the best and most efficient use of the water remaining under the subordination cap, particularly in light of

interests of water users in other areas (i.e. Upper Salmon area, Challis, etc.).

Given the unique issues in the Upper Lemhi, i.e. use of decreed existing “high flow” and the concerns relative to ESA listed salmonids, the “conservation of water resources within the state of Idaho” criteria weighs in favor of denying application for permit 74-16187. Moreover, since the Applicants’ existing water rights provide sufficient water for irrigation of their existing lands, the limited irrigation of an additional 320 acres does not promote “conservation” of existing water resources, particularly in regard to unique conditions created in the Upper Salmon River Basin under the Wild & Scenic Rivers Agreement. Instead, the new appropriation would not be an efficient use of the water resources in the Upper Salmon River Basin that could be protected by the subordination cap. For this additional reason IDWR should deny application for permit 74-16187.

CONCLUSION

The Protestant Water Users submit that IDWR should deny application for permit 74-16187 filed by Kurt and Janet Bird. The unique circumstances of this case show that the “local public interest” of existing “high flow use” and issues surrounding ESA-listed salmonids weigh against granting this new consumptive use out of Big Timber Creek for 320 acres. The broad benefits of continued “high flow” use for existing irrigated lands and the Lemhi River resource as a whole outweigh the individual benefit that would accrue to the Applicants. The Protestant Water Users are mindful of the Applicants desire to obtain a new water right but believe the evidence shows that the “local public interest” weighs in favor of these other unique considerations.

Notably, achieving a long-term Section 6 Agreement is critical for future agricultural operations in the basin and any actions that threaten or undermine those efforts must be carefully evaluated through that lens. The State of Idaho and local water users have invested considerable resources in achieving that protection. The Idaho Water Resource Board continues to make

progress on important habitat projects that will ultimately benefit all water users in the region.

IDWR should give great weight to that consideration in evaluating new appropriations in the Lemhi River Basin.

Further, the application is inconsistent with the “conservation of water resources within the State of Idaho” given the unique facts surrounding the Wild & Scenic Agreement and water needed for listed salmonids. Approving a new limited use on a high tributary is not the best water resource planning, particularly given the limited benefits of the subordination cap that exist today.

Since the Applicants did not carry their burden to show the application is in the “local public interest” or consistent with the “conservation of water resources within the state of Idaho,” the application should be denied.

DATED this 27th day of September, 2019.

BARKER ROSHOLT & SIMPSON LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2019, I served a copy of the foregoing PROTESTANT WATER USERS' POST-HEARING BRIEF, by electronic mail and U.S. Mail to the following:

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